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TITLE 65 STATE LOTTERY COMMISSION

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**Emergency Rule**

LSA Document #07-473(E)

**DIGEST**

Amends [65 IAC 2-1-3](#) and [65 IAC 2-1-8](#) concerning application of procurement rules to certain contracts. Amends [65 IAC 2-1-9](#) concerning contract amounts for small purchases. Amends [65 IAC 2-1-12](#) concerning the manner of giving public notice for procurements. Adds [65 IAC 2-1-19](#) to clarify what "security services" means under [IC 4-30-2-5](#). Effective July 26, 2007.

[65 IAC 2-1-3](#); [65 IAC 2-1-8](#); [65 IAC 2-1-9](#); [65 IAC 2-1-12](#); [65 IAC 2-1-19](#)

SECTION 1. [65 IAC 2-1-3](#) IS AMENDED TO READ AS FOLLOWS:

**[65 IAC 2-1-3](#) Applicability****Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)**Affected:** [IC 4-30-3-16](#); [IC 4-30-8](#)

Sec. 3. (a) This article applies to every expenditure of commission funds under any contract for the procurement of goods or services except for the following:

- (1) Any contract with a state agency, state official, or any other body corporate and politic of this state.
- (2) Employment contracts with individuals.
- (3) Contracts for investment or related financial services.
- (4) Contracts relating to the retail sales of lottery tickets.
- (5) Contracts for goods or services provided as part of, or related to, a lease of real property.
- (6) Amendments, modifications, or extensions of existing contracts, unless the predominate purpose of an amendment or modification is to avoid the applicability of this article.
- (7) Contracts for personal or professional services.
- (8) Contracts for employee benefits and related services.
- (9) Contracts for market studies and research related services.**
- (10) Contracts for sponsorships, promotions, and advertising placement.**

(b) In determining the applicability of this article to a specific contract, the substantial purpose of the contract shall be controlling. This article shall not apply to the acquisition of goods or services under a contract to which this article would not otherwise apply if the acquisition of such goods or services is not the substantial purpose of the contract.

*(State Lottery Commission; [65 IAC 2-1-3](#); emergency rule filed Jul 20, 1989, 4:10 p.m.: 12 IR 2293; emergency rule filed Sep 5, 1989, 3:20 p.m.: 13 IR 91; emergency rule filed Dec 9, 1996, 4:00 p.m.: 20 IR 962; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jul 26, 2007, 11:03 a.m.: [20070808-IR-065070473ERA](#))*

SECTION 2. [65 IAC 2-1-8](#) IS AMENDED TO READ AS FOLLOWS:

**[65 IAC 2-1-8](#) Special procurement****Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)**Affected:** [IC 4-30-3-16](#); [IC 4-30-8](#)

Sec. 8. (a) ~~Notwithstanding~~ **Notwithstanding** any other provision of this article, the director may make, or authorize others to make, special procurements:

- (1) when there exists a threat to public health, welfare, or safety, or the integrity or operation of the lottery;
- (2) when there exists a unique opportunity to obtain supplies or services at a substantial savings, including an opportunity to obtain supplies or services at reduced cost or no cost;
- (3) when the market structure requires the commission to inspect and bid on the supplies to be procured;
- (4) for the procurement of data processing contracts or license agreements for:

- (A) software programs;
  - (B) hardware; or
  - (C) software and hardware maintenance contracts;
- (5) for any services, provided that a broad announcement of the availability of the contracting opportunity is made in such a manner as is determined by the director to be reasonably calculated to be received by a substantial number of potential vendors;
- (6) when the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the procurement and only a limited number of sources meet the commission's reasonable requirements;
- (7) when procurement of the required supplies or services under another section of this rule would seriously impair the functioning of the lottery;
- (8) when a contract has been solicited for a procurement under another section of this rule and the commission has not received a reasonable, responsive offer;
- (9) when the time periods for performance as determined by the director would be seriously impaired by competitive bidding, so long as at least two (2) price quotes are obtained. ~~or~~
- ~~(10) for sponsorships, promotions, and advertising placement.~~

(b) A special procurement must be made with such competition as is practicable under the circumstances as determined by the director.

(c) A written determination of the basis for the special procurement must be included in the contract file.

*(State Lottery Commission; [65 IAC 2-1-8](#); emergency rule filed Jul 20, 1989, 4:10 p.m.: 12 IR 2295; emergency rule filed Sep 5, 1989, 3:20 p.m.: 13 IR 91; emergency rule filed Oct 24, 1989, 2:15 p.m.: 13 IR 408; emergency rule filed Nov 20, 1989, 10:05 a.m.: 13 IR 680; emergency rule filed Dec 9, 1996, 4:00 p.m.: 20 IR 964; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jul 26, 2007, 11:03 a.m.: [20070808-IR-065070473ERA](#))*

SECTION 3. [65 IAC 2-1-9](#) IS AMENDED TO READ AS FOLLOWS:

#### **[65 IAC 2-1-9](#) Small purchases**

**Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)

**Affected:** [IC 4-30-3-16](#); [IC 4-30-8](#)

Sec. 9. A contract in an amount which does not exceed ~~five hundred~~ **two hundred** thousand dollars (~~\$50,000~~) (**\$200,000**) may be made under any practice or procedure as may be considered desirable by the director; provided that, when practicable, more than one (1) price quote is obtained for any procurement valued in excess of ~~five hundred~~ thousand dollars (~~\$5,000~~). (**\$50,000**). If a series of contracts awarded under this section for a single classification of goods or services are awarded to one (1) vendor and such contracts are all awarded within a period of six (6) months or less and the total contract price on such series of contracts exceeds ~~seventy-five~~ **two hundred fifty** thousand dollars (~~\$75,000~~), (**\$250,000**), then any of the contracts in such series which would cause the total contract price to be in excess of ~~seventy-five~~ **two hundred fifty** thousand dollars (~~\$75,000~~), (**\$250,000**), shall not be deemed to be a small purchase qualifying under this section.

*(State Lottery Commission; [65 IAC 2-1-9](#); emergency rule filed Jul 20, 1989, 4:10 p.m.: 12 IR 2295; emergency rule filed Sep 5, 1989, 3:20 p.m.: 13 IR 92; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jul 26, 2007, 11:03 a.m.: [20070808-IR-065070473ERA](#))*

SECTION 4. [65 IAC 2-1-12](#) IS AMENDED TO READ AS FOLLOWS:

#### **[65 IAC 2-1-12](#) Manner of giving notice**

**Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)

**Affected:** [IC 4-30-3-16](#); [IC 4-30-8](#)

Sec. 12. (a) Whenever public notice is required by this rule, the notice shall be given in the manner prescribed by this section.

(b) If the ultimate expenditure involved in a procurement is estimated by the director, **or the director's designee**, to exceed ~~one~~ **three** hundred thousand dollars (~~\$100,000~~), **(\$300,000)**, a notice shall be published at least once.

(c) The director, **or the director's designee**, may provide for publication of additional notices, even if no publication is required by this subsection. Whenever publication of notice is required by this section, the notice shall be published at least in one (1) newspaper of general circulation in Marion County, Indiana. If any of the services or supplies being procured are for a specific use located outside Marion County, Indiana, the notice may also be published in one (1) or more newspapers of general circulation in the area in which the services or supplies are to be used. The director, **or the director's designee**, may designate additional newspapers for the publication of notice according to the nature of the procurement.

(d) In addition to the publication requirements of this section, the director, **or the director's designee**, shall give notice in the following manner whenever the ultimate expenditure involved in a procurement is estimated by the director to exceed twenty-five thousand dollars (\$25,000):

(1) The director, **or the director's designee**, may send notices, invitations to bid, requests to bid, requests for offers, or requests for proposals by mail to prospective bidders or offerors known to the director, **or the director's designee**, to be reasonably susceptible to award of the contract. However, failure to give notice to a particular bidder or offeror does not invalidate a procurement under this rule.

(2) The director, **or the director's designee**, may post notices on a public bulletin board in the ~~in the~~ director's office.

*(State Lottery Commission; [65 IAC 2-1-12](#); emergency rule filed Jul 20, 1989, 4:10 p.m.: 12 IR 2295; emergency rule filed Dec 9, 1996, 4:00 p.m.: 20 IR 965; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jul 26, 2007, 11:03 a.m.: [20070808-IR-065070473ERA](#))*

SECTION 5. [65 IAC 2-1-19](#) IS ADDED TO READ AS FOLLOWS:

**[65 IAC 2-1-19](#) Meaning of "security services"**

**Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)

**Affected:** [IC 4-30-8](#)

**Sec. 19. Contracts involving the use of online research services by the division of security shall not constitute "security services" as that term is used in [IC 4-30-2-5](#).**

*(State Lottery Commission; [65 IAC 2-1-19](#); emergency rule filed Jul 26, 2007, 11:03 a.m.: [20070808-IR-065070473ERA](#))*

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